

REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested.

A more descriptive amended title has been effected above as requested by the Examiner.

In response to the rejection of claims 1-19 under 35 U.S.C. §101, independent claim 1 has been amended so as to now define the claimed content distribution system as comprising a plurality of programmed processors configured to provide the various recited modules, each one of which is now recited as being executed by at least one of said processors. Clearly, the subject matter of all claims 1-19 is now directed explicitly to at least the category of “machine” under 35 U.S.C. §101 and thus defines statutory subject matter. Should there be any continuing concern about this issue, the Examiner is requested to telephone the undersigned for prompt resolution.

In response to the rejection of claim 21 under 35 U.S.C. §112, second paragraph, the dependency of this claim has been corrected – in exactly the manner assumed by the Examiner.

Accordingly, all formality-based issues are now believed to have been resolved in the applicants' favor.

The rejection of claims 1-8, 10-14, 16-18, 20-21 and 31 under 35 U.S.C. §102 as allegedly anticipated by Ukita EP '617 is respectfully traversed.

First of all, it is respectfully noted that although the Examiner has stated this ground of rejection as being based upon 35 U.S.C. §102(e), that would be impossible because the cited Ukita document is a European patent application – claiming priority from a Japanese application. Presumably, the Examiner intended to base this ground of rejection upon 35 U.S.C. §102(a) since Ukita was published on September 24, 2003, while the applicants' earliest presently claimed priority date is February 10, 2004. Although applicants reserve the right to possibly antedate the effective date of the cited Ukita reference, for the moment, it will be treated as putative prior art.

Context for how one of ordinary skill would understand a digital item is given in the specification on page 5, lines 12-27. A digital item, therefore, is not simply a "resource", but rather "a structured digital object, including standard representation and identification, and metadata". This definition is now explicitly incorporated into independent claims 1 and 20.

Claims 1 and 20 are further amended to more particularly point out that a digital item also includes by reference content for download and other content accessible by said second device without payment.

Ukita, on the other hand, merely "transmits content data" (paragraphs [0011] and [0039]). The content data is not a digital item. The content data is merely the underlying media data: e.g., text, music, still images, video, programs (paragraph [0046]).

The Examiner has asserted that the Ukita "file data" (paragraph [0155]) anticipates original claim 5 (now incorporated into amended claim 1). However, here the term "file data" is an instance of "content data". At paragraphs [0056]-[0057], Ukita explains that "the computer 3 opens the public file data storing the content data", and "transmits the related hash key and the related data file to the computer 5". Therefore, the mention of the words "file data" at paragraph [00155] does not teach or suggest "a structured digital object, including standard representation and identification, and meta-data", having the additional (also claimed) property of including "by reference said content for download and other content accessible by said second device without payment".

Amended claims 1 and 20 also require that "the digital item client on said first device includes a creator module for authoring digital items" having the annunciated properties (i)-(iii).

Ukita does not teach or suggest the use of "digital items" (as discussed above) and, in that sense, there also can be no motivation to author such digital items. Authoring is not within the contemplation of Ukita. In fact, Ukita's file data transfer scheme assumes that the file data at issue is pre-existing. The Examiner points to paragraphs [0055]-[0057] and [0077] as allegedly teaching this feature. However, at

most, paragraph [0057] merely describes generating hash key data from the (already existing) file data. The generation of a hash key is far removed from a creator module for authoring digital items – let alone digital items having the properties of: (i) adding and editing of content for a digital item; (ii) editing and establishing a digital item declaration for said digital item; and (iii) adding buy data for said digital item by including resources or metadata in said digital item declaration.

Given the fundamental deficiencies of Ukita already noted with respect to independent claims 1 and 20, it is not necessary to discuss additional deficiencies of Ukita with respect to other aspects of the rejected claims at this time. Suffice it to note that, as a matter of law, it is impossible to establish a *prima facie* case of anticipation unless the single cited prior art reference teaches each and every feature of each rejected claim.

The rejection of claims 9 and 15 under 35 U.S.C. §103 as allegedly being made "obvious" based on Ukita – again taken alone – is also respectfully traversed.

Fundamental deficiencies of Ukita have already been noted above with respect to parent claim 1. Even if it be assumed *arguendo* that the Ukita system might be implemented to handle MPEG-21 video content, the Examiner has not demonstrated that such would inherently include the claimed "digital item". Nor has the Examiner claimed how "percentage is a well known feature to present a quick index to users". Nor has the Examiner explained how a "quick index to users" relates to the recitations of

claim 15. Nor has the Examiner seemed to notice that claim 15 requires storage of credit data representing a percentage of remuneration for the user of the first device and storing credit data representing a percentage of remuneration for a publisher or creator of the content.

In any event, this ground of rejection is fundamentally based upon the presumption that Ukita anticipates parent claim 1 – which it clearly does not for reasons noted above.

The rejection of claim 19 under 35 U.S.C. §103 as allegedly being made “obvious” based on Ukita in view of Ricci ‘290 is also respectfully traversed.

Fundamental deficiencies of Ukita have already been noted above with respect to parent claim 1. Ricci does not supply those deficiencies. Accordingly, it is not necessary at this time to detail additional deficiencies of this allegedly “obvious” combination of references with respect to the additional features of rejected claim 19. Suffice it to note that, as a matter of law, it is not possible to establish even a *prima facie* case of “obviousness” unless the collection of prior art teachings relied upon teaches or suggests each and every feature of each rejected claim.

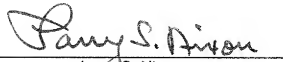
Ian Andrew MAXWELL, *et al.*
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Accordingly, this entire application is now believed to be in allowable condition,
and a formal notice to that effect is earnestly solicited.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:

A handwritten signature in dark ink, appearing to read "Larry S. Nixon", written over a horizontal line.

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